work any longer as a coconut plucker, but his knee injury would be permanent, his left arm deformed, and he would from now on walk with difficulty.

If I had tried this case in the first instance, having regard to previous awards in more or less similar cases probably I would not have awarded as much as $19,000 but I am not convinced that the trial judge acted upon some wrong principle of law, or that the amount awarded was so extremely high as to make it an entirely erroneous estimate of the damage to which the respondent is entitled.

I would therefore, dismiss the appeal with costs.

Suffian and **MacIntyre F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Elyas Majeed & Co.*

TAN SENG KIM v. KOH SUAT ENG & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Winslow J.) March 14, 1968]

[Singapore — Federal Court Civil Appeal No. Y. 35 of 1967]

Damages — Negligence — Contributory negligence — Personal injuries — Victim dying some three years after accident for reasons not connected with accident — Method of assessing general damages.

Damages — Personal injuries — Death intervening through causes unrelated to accident — Proportional reduction of damages.

Damages — Personal injuries — Comminuted fracture of tibia and fibula — Comminuted central fracture-dislocation of right hip joint — Simple fracture-dislocation of left shoulder.

This was an appeal against the judgment of Kulasekaram J. who found the appellant liable in an action for negligence in driving his car to the extent of two-thirds of the total damages assessed at $25,338.

At about 9 p.m. on December 22, 1960, the appellant was driving along Jalan Besar in the direction of Lavender Street when he collided with one Koh Hock Wah (hereinafter referred to as the deceased) a school teacher, aged 52 years, who was then crossing Jalan Besar from left to right in front of him. The deceased suffered severe injuries as a result of this accident but he made good recovery despite some residual disabilities. He subsequently died some 3 years and 7 months later but not for reasons connected in any way with the collision and the respondents accordingly brought this action on behalf of his estate. The deceased was treated as an in-patient at the General Hospital for three and half months after which he was discharged and he thereafter continued treatment as an out-patient for a little under seven months. The trial judge found that the accident could have been avoided if the appellant had maintained a reasonable speed and kept on his side of the road. Although there was some contributory negligence on the part of the deceased which was apportioned at one-third of the total responsibility, the trial judge awarded $20,000 as general damages.

Held, allowing the appeal partially: (1) in assessing general damages, there are broadly three heads to be considered, *viz.*: (i) pain and suffering; (ii) loss of amenities of life; and (iii) loss of future earnings. In this appeal no question arose under the third head;

(2) from the record, it did not appear that either counsel in the court below took the point with a view to showing the principle on which damages under the remaining two heads should be assessed where death intervenes through causes unrelated to the accident at an age far lower than the normal span of life;

(3) had the deceased not died before the trial at a far earlier age than the normal life expectation through causes having nothing to do with the injuries sustained in this accident, it would have been difficult to criticise the award of $20,000 damages under these heads. But he died much earlier and, in the circumstances, both logic and realistic approach demand that damages under these heads should be proportionally reduced, more so in the case of loss of amenities of life than perhaps in the case of pain and suffering;

(4) the appeal will be partially allowed to the extent that the assessment of general damages at $20,000 be reduced to $15,000. The total amount of general and special damages will accordingly be reduced from $25,338 to $20,338. As the appellant's liability is only two-thirds of this amount, the judgment which was entered in the sum of $16,892 for the respondents against the appellant will be altered to one for $13,559.

FEDERAL COURT.

C. S. Wu for the appellant.

S. Santhiran for the respondents.

Cur. Adv. Vult.

Winslow J.: This is an appeal against the judgment of Kulasekaram J. who found the appellant liable in an action for negligence in driving his car to the extent of two-thirds of the total damages assessed at $25,338.

At about 9 p.m. on 22nd December, 1960, the appellant was driving a motor-car SU 4441 along Jalan Besar in the direction of Lavender Street when he collided with one Koh Hock Wah (hereinafter referred to as the deceased) a school teacher, aged 52 years, who was then crossing Jalan Besar from left to right in front of him. The deceased suffered severe injuries as a result of this accident but he made good recovery despite some residual disabilities. He subsequently died some 3 years and 7 months later but not for reasons connected in any way with the collision and the respondents accordingly brought this action on behalf of his estate.

Traffic in Jalan Besar, which is not one of our most salubrious thoroughfares, was quite heavy at the material time. On the facts found by the trial judge, the appellant was driving his car at a speed of at least 25 miles an hour, if not more, on the wrong side of the road in circumstances which made him conclude that the appellant was primarily to blame. He was then overtaking a taxi at a speed which was found to be excessive in all the circumstances of the case, having regard to the state of traffic in Jalan Besar, on both sides of which there were parked

cars immediately before the scene of the collision. There were brake marks behind the rear wheels of the car which were 26 feet long behind the near-side rear wheel and 21 feet 10 inches long behind the off-side rear wheel. Both brake marks took a direction diagonally towards the left hand side of the road from the right and the car finally wound up with its front facing the nearest corner of Rowell Road on its left with its near-side front at a distance of 12 feet 8 inches from the left hand edge of Jalan Besar and 9 feet 10 inches from the corner itself. Jalan Besar itself is 46 feet 10 inches wide at the scene of the collision.

It is contended on behalf of the appellant that the trial judge's finding of excessive speed was unjustified and against the weight of evidence and that his finding of encroachment upon the wrong side of Jalan Besar was irrelevant to the issue of liability. I am unable to agree with these contentions having regard to the busy state of traffic in Jalan Besar at the relevant time. A speed of 25 m.p.h. might not be considered excessive in less congested streets but a speed which causes a driver to leave brake marks, of the lengths described earlier, in a busy thoroughfare is obviously excessive having regard to the particular circumstances. Furthermore, if it was the intention of the appellant to turn left into Rowell Road which he had mistaken for Desker Road, the last thing that he should have done was to be travelling on the wrong side of the road at that speed and to overtake a taxi on his left and then to cut across its front in order to enter that street. As the trial judge found, this accident could have been avoided if the appellant had maintained a reasonable speed and kept to his side of the road. Although there was some contributory negligence on the part of the deceased which was apportioned at one-third of the total responsibility, it is in my judgment clear that the appellant was, in all the circumstances, primarily to blame. That part of the appeal therefore which is directed towards the issue of liability accordingly fails.

The more important question in this case is whether general damages at $20,000 were correctly assessed.

Undoubtedly, the deceased suffered severe personal injuries comprising:—

1. Simple comminuted fracture of the right tibia and fibula at the mid-shaft;
2. Simple comminuted central fracture-dislocation of the right hip joint with involvement of the right hemipelvic bone;
3. Simple fracture-dislocation of the left acromio-clavicular joint.

He was treated as an in-patient at the General Hospital for 3½ months after which he was discharged and he thereafter continued treatment as an out-patient for a little under 7 months. Dr. Fung, the senior orthopaedic surgeon at the General Hospital, found that the patient had made extremely good recovery from these severe injuries but that the first injury had resulted in limitation of flexion of the right knee, that the second injury had also resulted in residual disability of the right leg and hip to the extent of 25 per cent and that although he could walk normally, "he could not cross his legs like a tailor" and that there was osteo-arthritis. The third injury had caused minimal disability. With regard to loss of hearing in both ears, the judge accepted the medical evidence that the deceased's hearing had not been affected by the accident and that such deafness as he had complained of to them had originated through other causes before the accident. The then counsel for the appellant therefore submitted that a figure of $20,000 would be reasonable as general damages although this amount was considerably lower than that for which counsel for the respondents contended. The trial judge accepted the appellant's figure.

In assessing general damages, there are broadly three heads to be considered, *viz*:—

(i) pain and suffering;

(ii) loss of amenities of life;

(iii) loss of future earnings.

In this appeal no question arises under the third head but it is now contended, with regard to the other two heads of non-pecuniary loss assessed at $20,000, that the trial judge failed to take into account the deceased's age and physical disabilities at the time of the collision and the fact that he died 3 years and 7 months after the accident through causes unrelated to that accident.

From the record, it does not appear that either counsel in the court below took the point with a view to showing the principles on which damages under these two heads should be assessed where death intervenes through causes unrelated to the accident at an age far lower than the normal span.

According to *Mayne & McGregor* on Damages, 12th edition, at paragraph 781: "Pain and suffering is the main head of non-pecuniary loss. Again it covers past and prospective pain and suffering". With regard to the second head, loss of amenities of life, paragraph 784 of the same volume provides that the "plaintiff's enjoyment of life may be curtailed not only by the positive unpleasantness of pain and suffering but in a more negative way by his inability to pursue the activities he pursued beforehand".

Had the deceased not died before the trial at a far earlier age than the normal life expectation through causes having nothing to do with the injuries sustained in this accident, it would have been difficult to criticise the award of $20,000 damages under these heads. The fact,

however, remains that he did die much earlier and, in the circumstances, both logic and a realistic approach demand that damages under these heads should be proportionately reduced, more so in the case of loss of amenities of life than perhaps in the case of pain and suffering.

In my opinion, an award of $10,000 general damages under the head of pain and suffering would be a reasonable one.

It is the assessment of damages under the second head which causes some difficulty because, apart from a reduction of damages which would be justified by his premature demise, there is also little evidence to indicate the full extent of his inability to pursue the activities he pursued beforehand as a result of the residual disabilities described by Dr. Fung.

In my view, an award of $5,000 would be adequate, if not generous, under this head.

The appeal is accordingly partially allowed to the extent that the assessment of general damages at $20,000 will be reduced to $15,000. The total amount of general and special damages will accordingly be reduced from $25,338 to $20,338. As the appellant's liability is only two-thirds of this amount, the judgment which was entered in the sum of $16,892 for the respondents against the appellant will be altered to one for $13,559.

Wee Chong Jin C.J. and **Tan Ah Tah F.J.** concurred.

Appeal partially allowed.

Solicitors: *Donaldson & Burkinshaw; J. Tan Chor-Yong & Co.*

GAN POH CHYE v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) March 15, 1968]
[Singapore — Magistrate's Appeal No. 204 of 1967]

Criminal Law — Vagrancy — Suspected person — Meaning of — Act antecedent to, and act occasioning the arrest — Dividing line — Vagrancy Ordinance (Cap. 125), s. 4(k).

Evidence — Quantum of proof in criminal cases.

In prosecutions under section 4(k) of the Vagrancy Ordinance (Cap. 125). magistrates should learn to draw the dividing line between the antecedent conduct which causes a person to be a suspected person, and the act which amounts to loitering with intent. Whether a dividing line can be drawn depends on the particular facts of each case which must be scrutinised with utmost circumspection and care.

The appellant was charged under section 4(k) of the Vagrancy Ordinance of being a suspected person found loitering with intent to commit theft. A police officer saw the appellant and a companion driving at 1.15 a.m. into a car park in which were many parked cars. The companion got out of the car and looked into the parked cars. He tried to open the doors of three cars. He waved to the appellant, whereupon the appellant walked towards his companion and stopped to talk to him. The appellant looked into all the cars and started meddling with the door of a car. The police officer saw him with a screw driver in his hand at work over a car door.

Held: before a person can be convicted under section 4(k) of the Vagrancy Ordinance, there must be some antecedent act which brings the person into the category of being a suspected person. The act must be separate and distinct from the act relied upon as evidence of loitering with intent. In the particular circumstances of this case the appellant's response to his companion's signal made him a suspected person, and his act of loitering with intent began when he started looking into the cars. However, as the record showed that the magistrate had not been satisfied beyond reasonable doubt of the appellant's guilt, the appeal must be allowed.

Observation on the quantum of proof required in criminal cases.

Cases referred to:—

(1) *Partap Singh* v. *R.* [1954] M.L.J. 144.
(2) *Hartley* v. *Ellnor* (1917), 86 L.J.K.B. 938.
(3) *Ledwith* v. *Roberts* [1937] 1 K.B. 232.
(4) *Rawlings* v. *Smith* [1938] 1 K.B. 675.
(5) *Cohen & Anor.* v. *Black* [1942] 2 All E.R. 299.
(6) *Pyburn* v. *Hudson* [1950] 1 All E.R. 1006.
(7) *Cosh* v. *Isherwood* [1968] 1 All E.R. 383; (1967), 111 S.J. 906.

MAGISTRATE'S CRIMINAL APPEAL.

M. N. Samy for the appellant.

K. S. Rajah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Winslow J.: This appeal raises two substantial grounds of dissatisfaction with the magistrate's conviction of the appellant on a charge under section 4(k) of the Vagrancy Ordinance (Cap. 125) that he, at about 1.30 a.m. on 19th June, 1967 at Jalan Novena Barat, being a suspected person, was found loitering with intent to commit a seizable and non-bailable offence, to wit, theft.

The first of the two grounds is directed to a misdirection in law as to the quantum of proof required before an accused person can be convicted. The magistrate, in his grounds of decision, was of the opinion that the story related by the accused was unlikely to be true.

The second ground is directed towards the question whether the appellant was, in fact, a suspected person who had been found loitering with intent to commit theft, on the facts proved by the prosecution.

The learned deputy public prosecutor conceded, with regard to the first ground about the finding that the accused's story was unlikely to be true, that the magistrate should have gone further into the matter by deciding whether this story raised a reasonable doubt in his mind as to the guilt of the appellant on the charge preferred against him.

I am not at all satisfied that he applied his mind correctly to the measure or standard of